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November 17, 2000

Magalie Roman Salas
Secretary
Federal Communications Commission
Suite TWB-204F
Washington, D.C. 20554

Re: Ex Parte Presentations in Common Carrier Docket 95-155

Dear Ms. Salas:

On November 15, 16 and 17 Robert Tate, Executive Director of The Toll Free Commerce Coalition (TTFCC), Brent Weingardt, Counsel to TTFCC, and Eric Fishman of the Toll Free Number Coalition met with the following individuals concerning the administration of toll free number distribution under the FCC's first-come, first-served policies: Rebecca Beynon, Legal Advisor to Commissioner Furchtgott-Roth; Kyle Dixon, Legal Advisor to Commissioner Powell; Deena M. Shetler, Legal Advisor to Commissioner Tristani; Jordon Goldstein; Legal Advisor to Commissioner Ness; Martin Schwimmer, Senior Attorney in the Network Services Division; Diane Griffin Harmon, Deputy Chief, Network Services Division; L. Charles Keller, Chief, Network Services Division; and Yog Varma, Deputy Chief of the Common Carrier Bureau. Kelvin Reeves of Bennet and Bennet was present for the meeting with the Network Services Division staff and Eric Fishman was not present for the meetings with Mr. Varma.

The attached, document "Toll Free Number Distribution is Significantly Flawed," reflects the substance of these meetings.   In addition, we have attached an e-mail that was sent to all Commission staff except Mr. Varma. Finally, we have attached handouts that were provided to some or all of the participants in these meetings.

In addition to the issues discussed in these documents, the parties summarized data provided by SMS/800 Management indicating that, based on current usage rates, toll free number exhaustion will not occur until September 2002.
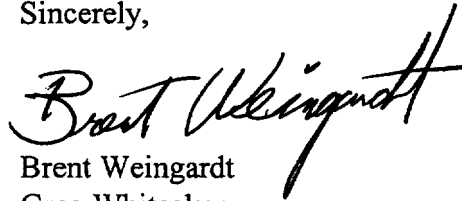
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In accordance with Section 1.1206 of the Commission's rules, we are providing you with two copies of these materials.

Please contact the undersigned if you have any questions.

Sincerely,

Brent Weingardt
Greg Whiteaker
Counsel
The Toll Free Commerce Coalition

Attachments (4)

Cc: Rebecca Beynon
Kyle D. Dixon
Deena Shetler
Jordon Goldstein
Yog R. Varma
L. Charles Keller
Diane Griffin Harmon
Martin L. Schwimmer
Eric Fishman

TOLL FREE NUMBER DISTRIBUTION IS SIGNIFICANTLY FLAWED

- **The Commission should reopen the record as to its "first come-first-served" policy for the distribution of toll free numbers due to changed circumstances**

  --The expected pyramiding of replication requests has not occurred

  --Squatters have become prevalent in the toll free industry

  --Toll free numbers are even more important to businesses as consumers continue to equate "800" with toll free as confusion reigns

  --Government is moving to modified property rights in spectrum and domain names; Users are willing to pay a fee for protection of numbers

  --The MGI-affiliated interexchange carriers are using the policy as an anti-competitive tool to build "800" market share

- **The "first come, first-served" policy is not working in practice**

  --For 877, Worldcom found a backdoor into the DSMI system

  --For 866, 12 mechanized generic interface (MGI) users received an inherent advantage in access to the DSMI data base versus the 268 Responsible Organizations using the graphical user interface (GUI).

- **DSMI has yet to create a number allocation method that comports with the "first-come, first-served" policy or its tariff**

  --On September 15, DSMI admitted that the SMS/800 data base is biased in favor of MGI users

  --DSMI has conducted two tests of its revised system, with no published results

  --The DSMI "fix" grants GUI users an opportunity to submit 10 numbers instead of one, but does not resolve the MGI advantage

- **TTFCC urges the Commission to repair the flaws in the toll free number distribution system by either:**

  --Acting on the Petitions for Reconsideration or re-opening the record prior to the distribution of 855 or subsequent codes; or

  --Delaying the 855 distribution until it has investigated the system response biases in the DSMI data base; No harm will result as number exhaustion is due on 9/02

  --Delaying release of only the easily recognized codes until it determines that the DSMI procedures provide all Responsible Organizations with an equal chance to obtain toll free numbers

Brent Weingardt

From: "Brent Weingardt" <bweingardt@bennetlaw.com>
To: <rbeynon@fcc.gov>
Cc: "Martin Schwimmer" <MSCHWMM@fcc.gov>; "Diane Harmon" <dharmon@fcc.gov>; "I keller" <ckeller@fcc.gov>; <agomez@fcc.gov>; <kdixon@fcc.gov>; <jgoldste@fcc.gov>; <dshetler@fcc.gov>
Sent: Thursday, November 16, 2000 2:01 PM
Subject: Report on Meeting with the Network Services Staff

At our meeting yesterday on behalf of The Toll Free Commerce Coalition (TTFCC), you asked that I report back to you regarding our meeting with the Network Services Division managers. On behalf of TTFCC, I am providing you, the other Common Carrier Legal Assistants and each of the Network Services Division (NSD) attendees a copy of this e-mail so that they are aware of and can disagree and/or elaborate on this report. We will of course be filing an ex parte reflecting our meeting and the additional data set out in this e-mail.

SUMMARY

* The Staff is aware of the "freeze out" problem that occurs when MGI-equipped Responsible Organizations compete with non-MGI equipped Responsible Organizations in the critical first hour of toll free number distribution. They do not believe this is a problem requiring a solution and that this comports with the First-Come, First-Served Policy.

* There is no impending technical "fix" to this problem. According to the Staff, the solution is simple. A smaller Responsible Organization may purchase the MGI interface for $500,000. When informed that all but the top 12 Responsible Organizations have no ongoing need for this MGI interface except in the first hour of number rollout, the staff understood the bias in favor of the MGI technology, but saw no need for government intervention to equalize access to the data base in the first hour. They expressed no concern that this discrepency could result in fewer Responsible Organizations due to the migration of consumers to the MGI companies with preferred access to the DSMI network.

* The Staff indicated that the FCC has no duty to "level the playing field" between parties of unequal market power. We responded that the Toll Free Data Base is an "essential facility" or resource under FCC control and that there are simply too many instances to site where the FCC has recognized that established and newer competitors cannot be expected to compete without some intervention by the FCC.

* We stressed that the non-MGI Responsible Organizations do not believe that the 12 largest Responsible Organizations should be prohibited from using the MGI technology in the ordinary course of business (they have greater capacity needs on a day to day basis) but that a technology that freezes out all others can hardly be considered non-discriminatory or "fair" access, especially to a public resourse under the FCC's auspices.
****

After the meeting, I learned from my client that the MGI interface is only available from DSMI for $554,903.00 in accordance with FCC Tariff. (We do not know that the NSD Staff is aware that DSMI is the sole supplier of MGI access.) The existence of a sole source technical upgrade that provides preferred (and at times exclusive) access to an essential and unique resource controlled by the same company raises apparent conflict of interest concerns as to the ability of that company to objectively manage that resource in the interest of all. This alone merits a closer look at DSMI's implementation of the FCC's First-come, First-served directive for access to these numbers. Again, we are not aware whether NSD has explored this is potential conflict.

* We believe that the technological inequities in access to the toll free data base today fundamentally *undermine* the First-come, First-served policy adopted by the FCC in 1998.

* The NSD does not authorize or condone the release date of new toll free numbers. According to DSMI's own data, exhaustion of all spare toll free numbers does not occur until September 2002. We believe that there should be no rush to release these numbers until the FCC has explored the issues related to "freeze outs" caused by DSMI's MGI access product. Neither the public toll free subscriber community nor any Responsible Organization will be harmed by a review of this matter prior to releasing 855 numbers.

SMS/800 FUNCTIONS

4. Schedule of Rates and Charges (Cont'd)

4.2 Rates and Charges (Cont'd)

	Monthly Rate	Per Request Rate	Nonrecurring Charge	
(E) Mechanized Generic Interface Testing				
- Mechanized Interface Activation				
- Per Resp Org Company			$342,884.00	
- Initial Installation Testing				
- Per Interface, per Resp Org Company			212,015.00	
- Additional Resp Org Requested Testing				
- Per Staff Day of Testing			1,605.00	
Per Staff Hour of Testing			214.00	
(F) Miscellaneous Functions				
(1) Batch Update				
- Per tape processed		$72.00		
Batch Update Testing				
- Per Staff Day of Testing		1,605.00		
- Per Staff Hour of Testing		214.00		
(2) Out of Hours Assistance Charge				
- Per 15 minute interval		20.78		
(3) Resp Org Change Charge				
- Per Request				
- Per 800 Number Changed		23.28		R
(4) Additional Copy of Monthly Bill				N
- Per Copy of Bill		$152.64		I

Issued: June 5, 1998

Effective: June 20, 1998

The names, titles and address of the
tariff's Issuing Officers are located
on Title Pages 2 through 4

Number
Search/Reservation
Concept 2A

May 2000

Number Search/Reservation Concepts

1 Single Transaction - Parallel Processing using Multiple Message Regions - no functionality change.

2 Single Transaction - Parallel Processing using Multiple Message Regions - with 5 functionality changes to improve processing time.

2A Single Transaction - Parallel Processing using Multiple Message Regions - with 4 functionality changes to improve processing time.

3 Single Transaction - Processing in One Message Region - no functionality change. No parallel processing during search and protecting number in locker database.

4 Single Transaction - Processing in One Message Region - with 5 functionality changes to improve processing time. No parallel processing during search and protecting number in locker database.

5A Single Transaction - Processing One Message Region - with 3 functionality changes to improve processing time. No parallel processing during search and protecting number in locker database.

5B Single Transaction - Parallel Processing using Multiple Message Regions - with 3 functionality changes to improve processing time. No parallel processing during search and protecting number in locker database.

2

Concept 2A: Functional Changes

Changes to Improve Processing

(Refer to Attachment 3)

1. Allow 3270 to do a Search/Reserve in one request for 1 to 10 specific or random numbers.

2. Move query and change for 3270/GUI to a different transaction which uses a separate region for processing.

3. Unlock 3270/GUI terminal once reservation is in progress and numbers are protected.

4. Move random (wildcard) searches to separate message region.

Changes reduce the total number of transaction volume in the single message processing region used for search/reserve only.

3

Number Search/Reservation Concepts Summary

Concepts	Scheduling	Msg Proc	Resv Queue	Impacts	Performance	FIFO
(1) Single Transaction Parallel Processing (4 months**)	1st in 1st out	Transaction Completion may vary	1st in 1st out	Similar to current through-put capacity	Depending on mix of requests, may have response degradation	First Come/ First Serve from Queue
(2)* Single Transaction Parallel Processing w/ 5 Functional Changes (5 months**)	1st in 1st out	Transaction Completion may vary	1st in 1st out	Similar to current through-put capacity.	Less possibility of response degradation	First Come/ First Serve from Queue
(2A) Single Transaction Parallel Processing - 5 months** w/ 1-4 chgs - 4 months** w/ 1-3 chgs	1st in 1st out	Transaction Completion may vary	1st in 1st out	Similar to current through-put capacity.	Less possibility of response degradation	First Come/ First Serve from Queue

*Provides: improved efficiency, level playing field, reduction in number reservation transactions.

** Very aggressive schedule - requires adjustments to current deliverables and immediate decision.

Number Search/Reservation Concepts Summary

| Concepts | Scheduling | | Resv | Impacts | Performance | FIFO |
	Msg Proc		Queue			
(3) Single Transaction Single Processing (4 months**)	1st in 1st out	1st in 1st out	1st in 1st out	Approx. 52-62% reduction of current through-put capacity	Depending on mix of requests, potential for significant response degradation	First Come/ First Serve from Queue
(4)* Single Transaction Single Processing w/Functional Changes (5 months**)	1st in 1st out	Transaction Completion may vary	1st in 1st out	Approx. 52-62% reduction of current through-put capacity	Depending on mix of requests, may have response degradation	First Come/ First Serve from Queue

*Provides: improved efficiency, level playing field, reduction in number reservation transactions.

** Very aggressive schedule - requires adjustments to current deliverables and immediate decision.

Number Search/Reservation Concepts Summary

Concepts	Scheduling Msg Proc	Resv Queue	Impacts	Performance	FIFO
(5A) Single Transaction Single Processing w/3 Functional changes (4 months**)	1st in 1st out	1st in 1st out	1st in 1st out	Approx. 52-62% reduction of current through-put capacity.	Potential exists for significant response degradation	First Come/ First Serve from Queue
(5B) Single Transaction Parallel Processing w/Functional Changes (4 months**) (Refer to Attachment 5B)	1st in 1st out	Transaction Completion may vary	1st in 1st out	Similar to current through-put capacity	Depending on mix of requests, may have response degradation	First Come/ First Serve from Queue

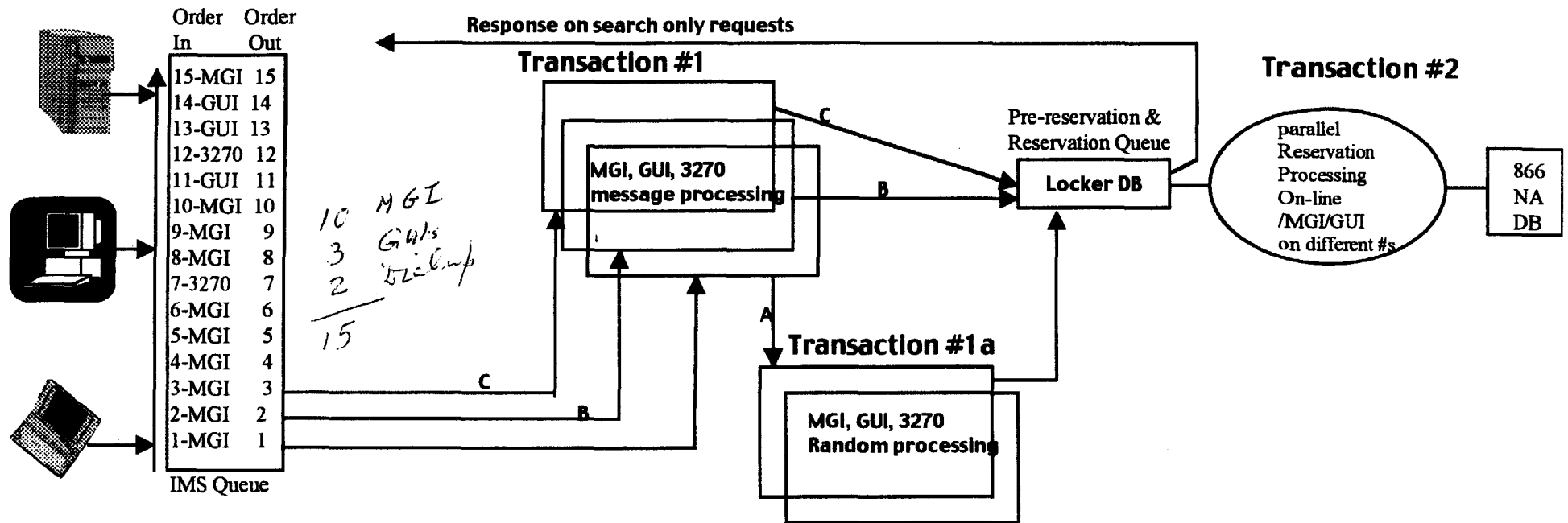*Provides: improved efficiency, level playing field, reduction in number reservation transactions.
** Very aggressive schedule - requires adjustments to current deliverables and immediate decision.

Attachment 3

Concept 2A
Search & Reservation
Single Transaction - Multiple Message Processing With 4 Functional Changes

• Every entry into IMS Queue is time stamped when it hits the system
• Entries leave the IMS queue in first-in-first-out manner
• There is parallel processing between the multiple regions
• Only 1 transaction is scheduled in a region at one time
• Specific searchers are protected immediately if spare
• Random searches don't slow down specific searches/reservations

A - Random search or random search/reservation
B - Specific # search or reservation
C - Specific # search/reservation